

Exhibit 353

United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al.
v. Dey, Inc., et al., Civil Action No. 05-11084-PBS

**Exhibit to the August 28, 2009 Declaration of Sarah L. Reid in Support
of Dey's Opposition to Plaintiffs' Motion for Partial Summary Judgment**

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ENDORSED

APR 15 2003

Clerk of the Napa Superior Court
By: L. WALKER
Deputy

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF NAPA**

16 DEY, L.P., a Delaware Limited Partnership,

Case No. 26-21019

17 Plaintiff,

18 vs.

19 FIRST DATABANK, INC., a Missouri
20 corporation, d/b/a First DataBank and d/b/a
PriceAlert; and
21 WOLTERS KLUWER HEALTH, INC., a
Delaware corporation, d/b/a Medi-Span and
d/b/a Facts and Comparisons,

**DECLARATION OF PAM MARRS IN
SUPPORT OF PLAINTIFF'S EX PARTE
APPLICATION FOR A TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE PRELIMINARY
INJUNCTION**

Date: April 15, 2003

Time: 3:00 p.m.

Dept.: B

Complaint Filed: April , 2003

Trial Date: N/A

25 I, Pamela R. Marrs, declare under penalty of perjury under the laws of the State of
26 California as follows:
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DECLARATION OF PAM MARRS IN SUPPORT OF PLAINTIFF'S APPLICATION FOR TRO AND OSC RE
PRELIMINARY INJUNCTION
PAI OALTO 4057854v1

1 1. I am the Senior Vice President and Chief Financial Officer of Dey, Inc., a Delaware
 2 corporation which is the sole general partner of Dey, L.P. ("Dey"), a Delaware limited
 3 partnership having its principal place of business and manufacturing facilities at 2751 Napa
 4 Valley Corporate Drive, Napa, California 94558. Dey is the plaintiff in the above-referenced
 5 action. As to the following facts, I know them to be true of my own knowledge and, if required,
 6 could competently testify thereto. As to those matters stated on information and belief, I believe
 7 them to be true.

8 2. I have been employed as an executive officer and Chief Financial Officer of Dey and
 9 Dey, Inc. for approximately 13 years.

10 3. In my position as Senior Vice President and Chief Financial Officer, I have the
 11 financial responsibility for Dey, and am involved in executive decisions relating to the future of
 12 Dey's business.

13 4. Various Dey staff members have informed me that First DataBank and Medi-Span,
 14 two electronic price reporting services to whom we provide pricing data, have recently changed
 15 the methodology they have used for the past ten years or more to calculate the published AWP
 16 for Dey's products. As a result, during the first week of April 2003, First DataBank and Medi-
 17 Span have dramatically lowered the AWPs reported for Dey's Albuterol Sulfate, Cromolyn
 18 Sodium and Ipratropium Bromide products, while we have no information that First DataBank
 19 has lowered the AWPs reported with respect to the products of Dey's competitors.

20 5. I have also been informed that numerous customers have called to complain that as a
 21 result of the lower AWP reported for Dey's products, they are not receiving adequate
 22 reimbursement for Dey's products from third party payors such as private insurance and state
 23 Medicaid programs. Some of Dey's customers have indicated that, should the AWPs reported by
 24 First DataBank and Medi-Span remain significantly lower than the AWPs of Dey's competitors,
 25 they will no longer buy Dey's products and will buy products from those competitors.

26 6. Dey's annual sales of Albuterol Sulfate, Ipratropium Bromide and Cromolyn Sodium
 27 were in excess of \$100,000,000.00 dollars for 2002.

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DECLARATION OF PAM MARRS IN SUPPORT OF PLAINTIFF'S APPLICATION FOR TRO AND OSC RE
 PRELIMINARY INJUNCTION
 PALOALTO 4057854V1

1 7. Over the past ten years, Dey has sold over a billion dollars in generic pharmaceuticals
2 the U.S. Most of these drugs were made by Dey at its facility in Napa County, California.

3 8. The lowering of Dey's reported AWP by First DataBank and Medi-Span will result in
4 significant and irreversible financial harm to Dey's business.

5 9. In fact, Dey has already considered reducing production of its generic products at the
6 Napa plant in anticipation of mass customer defection due to First DataBank's and Medi-Span's
7 conduct.

8
9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct and that this declaration was executed this 14 day of April, 2003 at
11 Napa, California.

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14 _____
15 Pamela R. Marrs
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DECLARATION OF PAM MARRS IN SUPPORT OF PLAINTIFF'S APPLICATION FOR TRO AND OSC RE
PRELIMINARY INJUNCTION
PALOALTO 4057854V1